

REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action dated May 17, 2005 and to the Notice of Non-Responsive Amendment, Bona Fide Attempt dated November 2, 2005. Reconsideration and allowance is requested.

Claims 23-32 remain in this application. Claims 6-17 were canceled by a previous amendment. Claims 1-5, and 18-22 were withdrawn by the Examiner in the Notice of Non-Responsive Amendment and are now canceled by this amendment. Claims 23-32 are new claims.

New claims 23-27 are directed to the elected invention of Group I which is a method of ordering electronic goods based on a distributor's sales strategy. New claims 28-32 are directed to the corresponding apparatus claims. **Support** for these new claims can be found throughout the specification such as page 9 lines 3-14 of the originally filed specification or paragraph [0066] of the corresponding published application 20020059108. Additional support can be found on and page 9 lines 15-30 of the originally filed specification or paragraph [0067] - [0068] of the corresponding published application 20020059108.

Notice of Non-Responsive Amendment, Bona Fide Attempt

A Notice of Non-Responsive Amendment, Bona Fide Attempt was mailed as a result of the Applicant's Response to Office Action dated August 16, 2005. The Notice of Non-Responsive Amendment was sent because:

Amended claims 1-5 and newly presented claims 18-22 are directed to an invention that is independent or distinct from the invention originally claimed for the following reason: These claims are now directed to displaying a limited set of goods having promotion points. This invention was presented in the original set of claims which the Examiner restricted and which the Applicant's Response filed on November 3, 2004.

Counsel for assignee called Examiner Haq on November 22, 2005 to clarify the notice of non-responsiveness. Counsel would like to thank the Examiner for his clarification of

the notice. During the telephone call Examiner Haq indicated that the original claims were directed to a method of ordering electronic goods based on a distributor's sales strategy, and that the amended claims no longer contained this limitation. Examiner Haq further indicated that if the amended claims included this limitation, then the previous response would be responsive. Therefore, in accordance with the Examiner's instructions claims 1-5 have been canceled and replaced with new claims 23-27 which are directed at a method of ordering electronic goods based on a distributor's sales strategy. Similarly, claims 18-22 have been canceled and replaced with new claims 28-32 which are the corresponding system for an electronic goods ordering apparatus based on a distributor's sales strategy.

Although the following remarks are similar to the remarks presented in the Response to Office Action dated August 16, 2005, they are presented here because some of them have been changed in light of the different claims presented in this response.

Claim Objections

In the Office Action, claim 2 was objected to because it contains limitations with quotation marks. Claim 2 has been canceled so this objection is now moot. None of the new claims contain quotation marks as recommended.

Claim Rejection Under 35 USC 112

In the Office Action, claims 1-5 were rejected under 35 USC 112, second paragraph, as being indefinite because the phrase "...above a predetermined distributor set priority level means." in claim 1 is unclear. Additionally, these claims were rejected because the limitation "...broad conditions..." is a relative term which renders the claim indefinite. Claims 1-5 have been canceled and none of the new claims include "a predetermined distributor" or the word "broad." Therefore, counsel for assignee believes that this rejection has been overcome.

Claim Rejection Under 35 USC 103

In the Office Action, the Examiner rejected claim 1-5 under 35 USC 103(a), as being unpatentable over Giovannoli (US 5,758,328). The Examiner stated that Giovannoli

discloses displaying to the consumer a subset of the commodities found above a predetermined distributor set priority level (column 5, line 37 - column 6, line 11). The counsel for assignee respectfully traverses. Giovannoli's computerized system does not display to the consumer a subset of the commodities found but rather displays a response to a request for quotation given by the buyers and forwards the request for quotation to the selected sellers based on the filtering conditions given by buyers and/or sellers. Additionally, Giovannoli does not display results in the order of the determined priority level. Instead, Giovannoli discloses that the sellers may select to sell a good or not to sell a good but cannot give priority levels to sell by the filtering condition. Therefore, if one or more products meet the criteria provided by the consumer, Giovannoli cannot display to the consumer a subset of the commodities found by the search, in the order of the determined priority level. Therefore counsel does not believe that Giovannoli makes obvious the claimed embodiment because Giovannoli does not teach each and every element of the claimed invention and cannot be reasonably modified to do so.

Nevertheless, new claim 23 has been prepared to *further* distinguish it from Giovannoli. Claim 23 is now different than claim 1 because it includes assigning promotion points to commodities on a basis of a distributor's sales strategy; determining the priority level of the commodities found by said searching, wherein the priority level is based on the promotion points that are assigned based on a distributor's sales strategy; and displaying to the consumer a subset of the commodities found by said searching in order of said determined priority level. Support for this new claim can be found throughout the specification such as page 9 lines 3-14 of the originally filed specification or paragraph [0066] of the corresponding published application 20020059108. Since Giovannoli is incapable of promoting some goods more than others by utilizing a distributor's sales strategy that uses promotion points, the new claims are further distinguished from Giovannoli. Counsel for assignee believes that the new claims are not obvious under Giovannoli and respectfully request that the claims be allowed.

In addition, claim 24 recites that the priority level of commodities are determined according to the sum of the promotion points related to the commodities found by the search and the promotion points related to the lower level of processing of the commodities. Support for this limitation can be found throughout the specification such as page 9 lines 15-30 of the

originally filed specification or paragraph [0067] - [0068] of the corresponding published application 20020059108. Giovannoli does not teach this limitation.

Regarding claims 25-27, the Examiner acknowledged that Giovannoli does not disclose a type of food, restriction on diet, or price constraints. Nevertheless, similar claims 3-5 were rejected because "these limitations are not functionally involved in the steps of the recited method...these limitations are deemed to be non-functional descriptive material." Counsel for assignee respectfully traverses. According to MPEP 2106(IV)(B)(1)(b):

Office personnel should be prudent in applying the foregoing guidance. Nonfunctional descriptive material may be claimed in combination with other functional descriptive multi-media material on a computer-readable medium to provide the necessary functional and structural interrelationship to satisfy the requirements of 35 U.S.C. 101. The presence of the claimed nonfunctional descriptive material is not necessarily determinative of nonstatutory subject matter. For example, a computer that recognizes a particular grouping of musical notes read from memory and upon recognizing that particular sequence, causes another defined series of notes to be played, defines a functional interrelationship among that data and the computing processes performed when utilizing that data, and as such is statutory because it implements a statutory process.

In new claims 25-27 the type of food, restriction on diet, or price constraints defines a functional interrelationship among that data and the computing processes performed when utilizing the type of food, restriction on diet, or price constraints data. Therefore, these limitations are not non-functional descriptive material and should be allowed in light of the fact that they are not disclosed by Giovannoli, as acknowledged. Additionally, counsel believes that claims 25-27 are allowable because they depend from independent claim 23, which is allowable.

Since new claims 28-32 are corresponding apparatus claims, these claims patentable for similar reasons as are claims 23-27.

Appl. No. 09/888,192
Amdt. dated November 29, 2005
Reply to Office Action of November 2, 2005

PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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